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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010428622026

+ **CRL.REV.P. 539/2026**

SUB INSPECTOR JITENDER & ORS.

.....Petitioners

Through: Mr. Maninder Singh, Senior Advocate with Mr. Hetesh Kummur, Mr. Anuj Singh and Ms. Janvi Narang, Advocates

versus

STATE (NCT OF DELHI) & ANR.

.....Respondents

Through: Mr. Amit Ahlawat, APP for the State Mr. Avi Singh, Senior Advocate with Mr. Mohit Seth, Mr. Vivek Jaiswal, Mr. Shikhar Garg and Ms. Aditi Gupta, Advocates for R-2

CNR No. DLHC010430732026

+ **CRL.REV.P. 541/2026**

INSPECTOR SUNIL KUMAR & ORS.

.....Petitioners

Through: Mr. Sanjeev Bhandari, Senior Advocate with Mr. Jatin Kadam and Mr. Arjit Sharma, Advocate

versus

STATE (NCT OF DELHI) & ANR.

.....Respondents

Through: Mr. Amit Ahlawat, APP for the State with SI Ved Prakash Mr. Avi Singh, Senior Advocate with Mr. Mohit Seth, Mr. Vivek Jaiswal, Mr. Shikhar Garg and Ms. Aditi Gupta, Advocates for R-2



CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

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14.09.2026

CRL.M.A. 28084/2026 (exemption) in CRL.REV.P. 539/2026

CRL.M.A. 28193/2026 (exemption) in CRL.REV.P. 541/2026

1. Allowed, subject to just exception.

CRL.REV.P. 539/2026 & CRL.M.A. 28083/2026 (stay)

CRL.REV.P. 541/2026 & CRL.M.A. 28192/2026 (stay)

2. Petitioners have assailed order dated 24.08.2026 of the learned Special Judge (POCSO Act), whereby the concerned DCP was directed to register FIR under relevant provisions of BNS against the allegedly delinquent police officers, who are the present petitioners.

3. It appears that subsequent to the order impugned in the present case, the learned POCSO Court also issued a notice to the concerned DCP, calling him upon to explain non-compliance. That order of the POCSO Court has been shown to me by learned Senior Counsel for respondent no. 2 in the course of his submissions.

4. On behalf of petitioners, the circumstances explained by both learned Senior Counsel are that the petitioners/police officials from Faridabad and Delhi, including the lady constables constituted a team that went to residence of the present respondent no. 2 in Badarpur, Delhi in order to apprehend son of the present respondent no. 2, who is involved in a number of criminal cases. It is further explained by both learned Senior Counsel that at the relevant police stations also, the relevant GD entries were recorded. However, at her residence, respondent no. 2 resisted the arrest of her son and



even threatened to get the said police officials involved in false cases under POCSO Act through complaints to be lodged by her granddaughters. Learned Senior Counsel submit that the entire proceedings were video recorded by them. However, son of the respondent no. 2, who had to be arrested could not be found. In order to carry out questioning of respondent no. 2, the petitioners, who included three lady constables took respondent no. 2 to PS Jaitpur to record GD entry and then the petitioners/police officers of Haryana Police took her to Mahila Thana, Sector-16, Faridabad.

5. In the above backdrop, the present respondent no. 2 filed an application under Section 175(3) BNSS before the Court of Special Judge (POCSO Act), which application was allowed by way of order impugned in this petition.

6. Both learned Senior Counsel for petitioners have taken me through record and it is specifically pointed out that in paragraph 47 of the impugned order, the learned Special Judge recorded a *prima facie* finding that offence under the POCSO Act was not made out. That *prima facie* finding was recorded by the learned POCSO Judge after perusal of the CCTV footage and video recordings.

7. It is contended by both learned Senior Counsel for petitioners that once the learned Special Judge (POCSO Act) arrived at a finding that no offence under POCSO Act was made out, the application under Section 175(3) BNSS ought to have been transmitted to the concerned Magistrate, instead of passing the impugned order.

8. Learned APP for the State and learned counsel for respondent no. 2 accept notice.

9. Learned APP for the State submits that he supports the present



petition.

10. Learned Senior Counsel for respondent no. 2 contends that the above mentioned findings of paragraph 47 of the impugned order are only *prima facie* findings and the same do not amount to a direction to the local police not to register the case under POCSO Act, if the necessary material is available before the local police. For, the provision under Section 175(3) BNSS and Section 173 BNSS read with Section 199 BNS make it mandatory for the local police to register FIR without conducting any preliminary inquiry.

11. On this aspect, it is important to keep in mind that even in the operative part of the impugned order, what the learned Special Judge directed was not mere registration of FIR under any provision of law, but specifically under the relevant provisions of BNS.

12. That being so, the question to be deliberated upon is as to whether in a case where the Special Judge under any statute arrives at a finding that no offence under the said statute is made out, they should transmit the application under Section 175(3) BNSS to the magisterial court or not.

13. On this aspect, both sides need to address at length. Today, I have heard learned Senior Counsel from both sides for about 40 minutes and now it is 05:05pm, so detailed arguments cannot be heard. More so on account of pending heavy board of two dates.

14. Therefore, operation of the impugned order shall remain stayed till next date.

15. Relist on 18.12.2026 in Advance List.

16. At this stage, as requested by learned Senior Counsel for respondent no. 2, it is directed that the digitized record of the POCSO Court be



requisitioned. Further, as requested, the SHO Jaitpur and SHO Mahila Thana, Sector-16, Faridabad, shall file their complete records.

GIRISH KATHPALIA, J

SEPTEMBER 14, 2026
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